



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 21

July 9, 2007

S. 1547 – FY08 Defense Authorization Bill

Calendar No. 260

Reported by the Committee on Armed Services on June 5, 2007, as an original bill, by a vote of 25-0. S. Rpt. 110-77. The Senate Select Committee on Intelligence, on sequential referral, recommended amendments to the bill, and then approved the bill by a vote of 15-0. S. Rpt. 110-125, with additional views.

Noteworthy

- On Monday July 9, 2007 at 3PM, the Senate began consideration of H.R. 1585, the House version of the FY08 Defense Authorization bill. This Legislative Notice covers the Senate's version of the bill, as reported by the Senate Armed Services Committee, with notations of the Senate Intelligence Committee's recommended amendments.
- The bill authorizes \$648.3 billion in budget authority for national defense programs, of which \$128.5 billion is directed to ongoing operations in Iraq, Afghanistan, and the war against Islamist terrorists.
 - The bill does not designate any of the funding authorized as emergency spending.
- The Majority Leader has promised up to four amendments addressing Iraq policy imposing either timelines for withdrawal or constraints on the ability of the President as commander-in-chief to direct the use of force in Iraq.
- Section 1023 fundamentally alters the process by which an alien unlawful enemy combatant can challenge his designation as such, to provide enemy combatants with legal representation and broader access to evidence, including discovery rights such as subpoena powers.
- Section 601 authorizes a 3.5 percent across-the-board pay raise for all uniformed service personnel effective January 1, 2008, which exceeds the President's request by a half of a percentage point.

Background/Overview

The Administration's FY08 defense budget request, released on February 6, 2007, was for \$647.2 billion, which was comprised of \$505.4 billion for the base budget and an additional \$141.8 billion for emergency supplemental spending authority for ongoing operations in Iraq and Afghanistan. CBO's scoring estimate of this request is \$648.8 billion, of which \$507 billion was the base request and \$141.8 was for emergency spending.

The Senate Armed Services Committee recommended \$648.3 billion in budget authority for national defense programs, of which \$128.5 billion is directed to ongoing operations in Iraq, Afghanistan, and the war against Islamist terrorists. The bill does two things to the President's request for emergency supplemental funds for ongoing war operations. First, it reallocates some of that request to the base budget accounts throughout the bill, and second, it recognizes separate war-related authorizations, but does not designate any of that spending as emergency. As the committee explained,

To clearly identify the cost of the war, the committee bill reallocates funding that the committee believes is not directly related to operations in Iraq and Afghanistan . . . from the war-related emergency request portion of the bill into the base budget accounts. . . . Funding for operations in Iraq and Afghanistan is contained in title XV (for personnel, operation and maintenance, procurement, and other costs normally funded in division A of this Act) and title XXIX (for military construction projects in Iraq or Afghanistan) of this Act. . . . [T]he committee bill does not designate any of the funding authorized by this Act as emergency spending.¹

Of particular note, the bill authorized the following amounts:

- \$109.8 billion in procurement funding, which is \$8.2 billion more than the President's budget request;
- \$74.7 billion in funding for research, development, test, and evaluation, which is \$458 million less than the requested level;
- \$143.5 billion for operation and maintenance, which is \$607 million more than the requested level;
- \$122.9 billion for military personnel, which is \$4 billion more than the requested level; and
- \$15.9 billion for all atomic energy defense activities, which is essentially equal to the President's request.

¹ Senate Armed Services Committee Report to Accompany the National Defense Authorization Act for Fiscal Year 2008, S. Rpt. 110-77, p. 621.

House Action

The House approved its FY08 Defense Authorization bill, H.R. 1585, on May 17, 2007, by a vote of 397-27. According the House Armed Services Committee, that bill provided an overall level of \$648.6 billion in budget authority, of which \$141.6 is for ongoing military operations. CBO scored H.R. 1585 as authorizing \$641 billion in budget authority.

Highlights

- Section 1023 fundamentally alters the process by which an alien unlawful enemy combatant can challenge his designation as such to provide enemy combatants with essentially mini-trials. It inserts a military judge as the decision maker and provides detainees with legal representation and extensive discovery rights, including subpoena powers. The section also makes major changes to compromises concluded in the Military Commissions Act last year.
- Section 1104 alters the current authority of the Department to create a new National Security Personnel System (“NSPS”), most notably by excluding Department of Defense wage-grade employees from NSPS.
- The bill prohibits the use of funds to take certain steps with respect to the creation of a long-range missile defense system in Europe, and the Committee recommended a decrease of \$85 million from the budget request of \$310.4 million for work on this system in Europe.
 - The committee focuses on effective near-term ballistic missile defense capabilities to protect forward-deployed U.S. forces against existing short- and medium-range missile threats by authorizing an additional \$255 million for the Patriot PAC-3 system, the AEGIS Ballistic Missile Defense (BMD) system, and the Terminal High Altitude Area Defense (THAAD) system.
 - The additional funding is offset by reductions to lower-priority programs.
- Section 601 authorizes a 3.5 percent across-the-board pay raise for all uniformed service personnel effective on January 1, 2008, which exceeds the President’s request by a half of a percentage point.
- Section 401 authorizes active-duty end strengths for the Army of 525,400 (an increase of 13,000) and the Marine Corps of 189,000 (increase of 9,000) by the end of FY 2008.
- The committee improved the management and oversight of the Department’s acquisition programs, most notably in the acquisition of major weapon systems, subsystems, components, and spare parts, with provisions to reduce the risk of contract overpricing, cost overruns, and failure to meet contract schedules and performance requirements.

- The bill adds \$2.7 billion for items on the Army Chief of Staff's Unfunded Requirements List, including
 - \$775.1 million for reactive armor and other Stryker requirements,
 - \$207.4 million for aviation survivability equipment,
 - \$102.4 million for combat training centers, and
 - funding for explosive ordnance equipment, night vision devices, and machine guns.
- Section 3122 expresses the sense of Congress on nuclear nonproliferation policy and the reliable replacement warhead program, including a statement that the Senate should ratify the Comprehensive Test Ban Treaty ("CTBT"), (which the Senate rejected by a vote of 48-51-1 on October 13, 1999).

Bill Provisions

S. 1547 provides for \$648.3 billion in budget authority for fiscal year 2008 for Defense Department operations and Energy Department national security programs.

Division A – Department of Defense Authorizations

Title I – Procurement

Authorization of Appropriations

- Section 101 authorizes these dollar amounts for Army procurement for fiscal year 2008:
 - \$5.2 billion for aircraft,
 - \$2.2 billion for missiles,
 - \$7.5 billion for weapons and tracked combat vehicles,
 - \$2.2 billion for ammunition, and
 - \$15 billion for other procurement.
- Section 102 authorizes these dollar amounts for Navy procurement for fiscal year 2008:
 - \$13.4 billion for aircraft,
 - \$3.1 billion for weapons (including missiles and torpedoes),
 - \$13.6 billion for shipbuilding and conversion, and
 - \$5.4 billion for other procurement.
- Section 102 also authorizes \$2.7 billion for Marine Corps procurement for fiscal year 2008.
- Section 103 authorizes these dollar amounts for Air Force procurement for fiscal year 2008:
 - \$12.6 billion for aircraft,
 - \$868.9 million for ammunition,
 - \$5.2 billion for missiles, and
 - \$16.3 billion for other procurement.

- Section 104 authorizes \$3.4 billion for Defense-wide procurement for fiscal year 2008, and Section 105 authorizes \$100 million for a Rapid Acquisition Fund.

Army Programs

- Sections 111 and 112 respectively authorize the Secretary of the Army to enter into a multiyear contract for the procurement of M1-A2 Abrams System Enhancement Package upgrades and M2A3/M3A3 Bradley fighting vehicle upgrades.
- The Committee recommended in its report that no funding be available in fiscal year 2008 for upgrading the M1-A2 Abrams tanks to the System Enhancement Package (“SEP”) configuration on the understanding that all of the remaining M1-A2 Abrams tanks will be upgraded to the SEP configuration with fiscal year 2007 funding.
- Section 113 prohibits the use of funds to procure the Stryker Mobile Gun System until 30 days after the date on which the Secretary of the Army certifies to Congress that the Stryker Mobile Gun System is operationally effective, suitable, and survivable for its anticipated deployment missions. The Secretary of Defense may waive this limitation.
- In report language, the Committee concluded that the statutory standard for approval of a multiyear contract to procure new or modify CH-47 Chinook helicopters has not been met. To that end, to meet the cost of an annual contract for fiscal year 2008, the committee recommended \$163.9 million for the Army aircraft procurement account for new CH-47 helicopters, which is \$6 million more than the budget request; and \$593.3 million in the account for CH-47 cargo helicopter modifications, which is \$16 million more than the request.
- The Committee recommended in its report that \$658.1 million be added to the base budget request of \$1 billion in the Weapons and Tracked Combat Vehicles account for Stryker vehicles; and \$117 million be added to the \$402.8 million war-related request for such vehicles.

Navy Programs

- Section 131 authorizes the Secretary of the Navy to enter into a multiyear contract for the procurement of *Virginia* class submarines with the limitation that the Secretary may not do so until he provides a certification that all of the statutory criteria to enter into a multiyear contract have been met.
 - In its report, the Committee recommended an increase of \$470 million to the budget request of \$702.7 million for procurement of *Virginia* class submarines.
- The committee recommended a decrease of \$30 million in the budget request of \$78.1 million in the Navy Shipbuilding and Conversion account for the DDG-51 *Arleigh Burke*-class destroyer program.

- The committee recommended a decrease of \$430.5 million in the budget request of \$910.5 million, thus providing \$480 million in the Navy Shipbuilding and Conversion account for the construction of the Littoral Combat Ship (“LCS”). These funds are to be used in conjunction with prior-year LCS funds to solicit bids for two fixed-price LCS Ship construction contracts, one for each of the two competing LCS variants. The Committee also directs the Secretary of Defense to submit a report on the acquisition strategy for the LCS program.
- The committee fully funded the budget request of \$1.2 billion in Navy Aircraft Procurement funds to purchase six Joint Strike Fighters for the Marine Corps.
- The committee fully funded the budget request of \$256.4 million in Navy Aircraft Procurement funds to procure four KC-130J aerial refueling aircraft.
- The committee fully funded the budget request of \$2 billion in Navy Aircraft Procurement funds to procure 21 MV-22 aircraft.

Air Force Programs

- The bill authorizes \$12.6 billion for Aircraft Procurement, Air Force, which is \$201 million more than the budget request.
- Section 141 prohibits the Secretary of the Air Force from retiring any C-130E/H tactical airlift aircraft, and requires that each of those aircraft be maintained in such a condition that will permit recall to future service.
- Section 142 provides that the Secretary of the Air Force shall not retire any KC-135E refueling aircraft until providing written notification of such retirement.
- The committee recommended a decrease of \$24.1 million in the budget request for the B-2 bomber, taking note of the problems experienced in the plane’s radar modernization program.
- The committee recommended an additional \$19 million to the budget request of \$18.1 million in the Air Force Aircraft Procurement account for the B-52 bomber, namely to be directed to the electronic countermeasure improvement and avionics midlife improvement programs.
- The committee fully funded the budget request of \$1.4 billion in Air Force Aircraft Procurement funds to procure six Joint Strike Fighters.
- The committee fully funded the budget request of \$686 million in Air Force Aircraft Procurement funds to procure nine C-130J tactical airlift aircraft.
- The committee fully funded the budget request of \$495 million in Air Force Aircraft Procurement funds to procure five CV-22 Osprey aircraft.

- The committee recommended a decrease of \$40 million from the budget request of \$201.1 million in the Air Force Missile Procurement account for the Joint Air-to-Surface Standoff Missile (“JASSM”).
- The committee recommended an additional \$125 million to the budget request of \$0.7 million in the Air Force Missile Procurement account for a fourth Advanced Extremely High Frequency satellite, because the successor program, the Transformational Satellite Communications system (“TSAT”), is delayed.
 - The committee [still] “fully supports the TSAT program,” and “directs the Air Force to fund TSAT fully,” but it “believes that it is prudent to procure a fourth AEHF to mitigate the risk of subsequent delays in TSAT, which would result in increasingly significant communications gaps.”
- The committee recommended an additional \$27.6 million to the budget request of \$4 million in the Air Force Other Procurement account for the Space-Based Infrared Satellite (“SBIRS”) system.

Defense-wide

- The committee directed the Secretary of Defense to submit a report every 60 days outlining the requirements of each military service for all armored tactical and support vehicles, such as the Mine Resistant Ambush Protected (“MRAP”) vehicle, and the extent to which those requirements have been met.

Title II – Research, Development, Test and Evaluation (“RDT&E”)

For RDT&E, the committee approved \$74.7 billion, which is \$458 million less than the President’s budget request. Section 201 makes the following respective authorizations:

- \$11.3 billion for the Army,
- \$16.3 billion for the Navy,
- \$25.6 billion for the Air Force, and
- \$21.5 billion for Defense-wide,
 - \$180 million of which is to be directed to the Director of Operational Test and Evaluation.
- Section 213 requires the Department to direct sufficient funds for the continued development and procurement of two options for the propulsion system for the Joint Strike Fighter (“JSF”). The committee recommended in report language an increase of \$480 million to the JSF budget request for this purpose.
- Section 255 is directed at accelerating the development, integration, and fielding of appropriate nanotechnology-based capabilities in defense systems.

- The committee recommended an additional \$5 million to the budget request of \$53.9 million for aviation advanced technology to develop the precision delivery of supplies to friendly forces by unmanned systems, as well as advanced munitions for unmanned air systems.
- The committee recommended the following additions to the budget request of \$76.5 million for applied research on medical technologies:
 - \$1 million for advanced battlefield head injury diagnostic tools;
 - \$2 million for biomechanics research to address head, neck, and chest injuries;
 - \$1.5 million for bioengineering research to support combat casualty care missions; and
 - \$2 million for the development of advanced wound dressings.
- The committee recommended the following additions to the budget request of \$53.3 million for advanced medical technologies:
 - \$2 million for research on the treatment of combat wounds;
 - \$2 million for the development of technologies to efficiently detect blunt trauma injuries;
 - \$2 million for remote vital signs monitoring systems;
 - \$3 million for the development of advanced lower limb prosthesis technologies;
 - \$3 million for research on novel tissue regeneration techniques to treat battlefield injuries; and
 - \$2 million for the development of advanced technologies to support telesurgery applications in battlefield environments.
- The committee fully funded the budget request of \$3.6 billion for the Future Combat Systems (“FCS”), and also added \$90 million for the Armed Robotic Vehicle for the FCS program.
- The committee denied the budget request of \$175 million for conventional Trident modification and directed that all of the funding be transferred and directed to studying the feasibility of kinetic, non-nuclear prompt global strike concepts. The committee then added funds to this research effort.
 - The committee expressed its belief that prompt global strike “should be clearly and unambiguously non-nuclear.”
- The committee recommended a decrease of \$39.4 million from the budget request of \$3.4 billion in Navy RDT&E funds for the development and testing of the Joint Strike Fighter.
- The committee recommended a decrease of \$15 million from the budget request of \$81.3 million in Navy RDT&E funds for support to the reliable replacement warhead.
- The committee recommended an additional \$11.8 million to the budget request of \$109.6 million in Air Force RDT&E funds for operational seismic technologies to support national requirements for monitoring nuclear explosions.
- The committee recommended an additional \$2 million to the budget request of \$116.7 million in Air Force RDT&E funds as part of applied research to detect and defeat cyber attacks.

- The committee recommended an additional \$50 million to the budget request of \$37.6 million in Air Force RDT&E funds for the space situational awareness program to develop a collection of sensors to detect and locate threats to a satellite.
 - Elsewhere, the Committee recommended an additional \$35 million to the budget request of \$187.8 million in Air Force RDT&E funds for the Space-based Space Surveillance program, which is to lead to a constellation of optical sensing satellites designed to find and track objects in Earth orbit, primarily those in Geosynchronous Earth Orbit.
 - It also recommended an additional \$16.8 million to the budget request of \$23.9 million for space situational awareness operations.
- The committee recommended \$80 million for space-based radar, for which there was no budget request.
- The committee recommended an additional \$100 million to the budget request of \$587 million in Air Force RDT&E funds to address issues related to the next two satellites of the Space-Based Infrared Satellite System (“SBIRS”) High.
- The committee recommended an additional \$7 million to the budget request of \$10.8 million for the National Security Space Office.
- The committee recommended a decrease of \$140 million to the budget request of \$314.5 million for the KC-X, which is to replace the KC-135 as the Air Force’s next-generation aerial refueling aircraft, given large unobligated balances from the prior fiscal year.

Missile Defense Programs

- Section 231 prohibits the use of funds to procure, activate a site, construct, or otherwise deploy a long-range missile defense system in Europe until
 1. the governments of the countries in which major components of the system are proposed to be deployed have each given final approval to any agreements concerning the proposed deployment of such components in their countries; and
 2. 45 days after a federally funded research and development center (“FFRDC”) completes a report on the options for ballistic missile defense for forward deployed forces of the United States and its allies in Europe.
 - Funds may be used for site surveys, studies, analysis and planning, and design for the European missile defense site, while development and testing can continue on the interceptor proposed for deployment.
- Section 231 further restricts the use of FY 2008 funding for the acquisition of operational missiles for the European site until the Secretary of Defense certifies that “the proposed interceptor to be deployed as part of such missile defense system has demonstrated, through successful, operationally realistic flight testing, a high probability of working in an operationally effective manner.”
 - There is no limitation on the acquisition of developmental and test missiles.

- In report language, the Committee recommended a decrease of \$85 million from the budget request of \$310.4 million for work on this system in Europe. This decrease rejects in its entirety the budget request for site activation and construction activities for the proposed European deployment, but provides \$225 million for site design and planning activities.
 - Funds may be used for construction should agreement be reached with Poland and the Czech Republic to proceed with deployment.
 - Otherwise, the committee recommended fully funding the remainder of the \$2.5 billion budget request for ground-based midcourse ballistic missile defense.
- Section 232 prohibits the use of funds to deploy more than 40 Ground-Based Interceptors (“GBIs”) at Fort Greely, Alaska, until the Secretary of Defense certifies that elements of the system to be deployed in Block 2006 have “demonstrated, through operationally realistic end-to-end flight testing, that it has a high probability of working in an operationally effective manner.”
- The budget request included \$472.9 million in the Army Missile Procurement account for the procurement of 108 Patriot Advanced-Capability-3 (“PAC-3”) missiles. The committee recommended adding \$75 million to the budget request for the purposes of procuring an additional 25 PAC-3 missiles.
- The committee recommended an additional \$105 million to the budget request of \$858.3 million for the Terminal High Altitude Area Defense (“THAAD”) system, of which:
 - \$40 million is to begin development of the Evolved THAAD Interceptor,
 - \$40 million is to increase the missile production rate to four per month, and
 - \$25 million is to be directed to additional flight testing of the system.
- The committee recommended an additional \$35 million to the budget request of \$73.6 million for the Arrow missile defense program, of which:
 - \$25 million is to be directed to increased co-production of the Arrow interceptor missile, and
 - \$10 million is to conduct a study of the potential for the THAAD system to serve as a follow-on to the Arrow system to provide an upper-tier defense of Israel against longer-range and more advanced ballistic missiles.
- The committee recommended an additional \$25 million to the budget request of \$7 million to accelerate short-range ballistic missile defense research (which is part of the larger \$962.6 million budget request for terminal-phase missile defense efforts).
- The committee recommended a decrease of \$200 million to the budget request of \$548.8 million for the Airborne Laser boost-phase missile defense program.
- The committee recommended an additional \$75 million to the budget request of \$1.1 billion for the Aegis system, of which:
 - \$20 million is for increasing the Standard Missile-3 (SM-3) interceptor, and
 - \$45 million is for long-lead production of 15 additional SM-3 interceptors.

- The committee recommended a decrease of \$55 million to the budget request of \$331.5 million for the Space Tracking and Surveillance System (“STSS”), which provides the crucial alert of a foreign missile launch, thereby activating the rest of the integrated system.
- The committee recommended a decrease of \$10 million to the budget request of \$27.7 million for missile defense space programs, which amounts to a complete reduction of the budget request for the space test-bed.
 - This has the effect of rejecting a program in its entirety before even discerning what its capabilities may be.

Title III – Operation & Maintenance (“O&M”)

For O&M, the committee approved \$143.5 billion, approximately \$607 million less than the President’s budget request. Section 301 includes the following respective authorizations:

- \$29.7 billion for the Army,
- \$33.3 billion for the Navy,
- \$33 billion for the Air Force,
- \$5 billion for the Marine Corps,
- \$22.4 billion for Defense-wide,
- \$2.5 billion for the Army Reserve,
- \$1.2 billion for the Navy Reserve,
- \$2.8 billion for the Air Force Reserve,
- \$209 million for the Marine Corps Reserve,
- \$5.9 billion for the Army National Guard,
- \$5.5 billion for the Air National Guard, and
- \$448 million for Former Soviet Union Threat Reduction programs.
- Section 323 requires a report on the incremental increase in reset costs related to the deployment of additional forces to Iraq.
- Section 324 requires a technical assessment of individual body armor systems currently available in the domestic market.
- Section 352 amends 10 U.S.C. § 377 to require a Federal agency to which law enforcement support or support to a national special security event is provided by National Guard personnel to reimburse the Department of Defense for the costs of that support.
- The committee recommended an additional \$8.7 million in the Defense-Wide O&M budget item to improve Special Operations Forces language and cultural awareness training.
- The committee recommended a decrease of \$212.4 million to the budget request of \$673.4 million for the Defense Security Cooperation Agency (which included a \$500 million request

for the Global Train and Equip program to build the capacity of foreign forces). The decrease is allocated as follows:

- \$200 million from the Global Train and Equip program,
 - \$7.4 million from the Center for International Issues Research program, which eliminates it completely, and
 - \$5 million for a Stability Operations Fellowship program, which eliminates it completely.
- The committee denied the Department's request for \$3 million for a new Office of the Secretary of Defense for Strategic Communication and Integration, which would lead the Department's strategic communication efforts.
 - The committee recommended an additional \$20 million to the budget request of \$250.2 million in the Defense-wide O&M account for environmental restoration of Formerly Used Defense Sites ("FUDS").

Title IV – Military Personnel

Although the Department of Defense divided its end-strength request between its base and war-related budget requests, the committee combined the total end-strength authorization. Thus, for military personnel, the committee approved \$109.4 billion, approximately \$4 billion more than the President's budget request. This increase comes from the shift in funds, and the \$302 million required for the authorized 3.5 percent across-the-board pay raise, versus the budget request of 3 percent. Otherwise, the committee recommended a decrease of \$507.2 million to military personnel accounts. Section 421 includes the following respective authorizations:

- \$35 billion for the Army,
 - \$23.3 billion for the Navy,
 - \$24.1 billion for the Air Force,
 - \$11.1 billion for the Marine Corps,
 - \$3.7 billion for the Army Reserve,
 - \$1.8 billion for the Navy Reserve,
 - \$1.4 billion for the Air Force Reserve,
 - \$594 million for the Marine Corps Reserve,
 - \$5.9 billion for the Army National Guard, and
 - \$2.6 billion for the Air National Guard.
- Section 401 authorizes the following end strengths for active duty personnel:
 - Army: 525,400, which is 36,000 more than the President's budget request, and 13,000 more than the level authorized in FY07;
 - Navy: 328,400, which is 12,300 less than the level authorized in FY07, as per the President's budget request;
 - Air Force: 328,600, which is 5,600 less than the level authorized in FY07, as per the President's budget request; and

- Marines: 189,000, which is 9,000 more than both the President's budget request and the level authorized in FY07.
- Section 411 authorizes the following end strengths for reserve personnel:
 - Army National Guard: 351,300, which is at the President's budget request, and 1,300 more than the level authorized in FY07;
 - Army Reserve: 205,000, which is at the President's budget request, and 5,000 more than the level authorized in FY07;
 - Navy Reserve: 67,800, which is 3,500 less than the level authorized in FY07, as per the President's budget request;
 - Air Force Reserve: 67,500, which is 7,400 less than the level authorized in FY07, as per the President's budget request;
 - Marines Corps Reserve: 39,600, which is at the President's budget request, and equal to the level authorized in FY07;
 - Coast Guard Reserve: 10,000, which is at the President's budget request, and equal to the level authorized in FY07; and
 - Air National Guard: 106,700, which is 300 less than the level authorized in FY07, as per the President's budget request.

Title V – Military Personnel Policy

- Sections 501 and 502 authorize increases in strengths for Army majors and Navy officers on active duty in the ranks of lieutenant commander, commander, and captain.
- Section 521 authorizes an increase from 1 to 1.25 percent in the authorized daily average of the number of enlisted members on active duty in pay grade E-9.
- Section 532 amends 10 U.S.C. § 10503 to require the Secretary of Defense, in consultation with the Secretary of the Army, the Secretary of the Air Force, and the Chairman of the Joint Chiefs of Staff, to prescribe a charter for the National Guard Bureau.
 - This provision implements a recommendation of the Commission on the National Guard and Reserves that the Secretary of Defense be responsible for drafting the charter for the National Guard Bureau.
- Section 533 amends 10 U.S.C. § 10502 to implement other CNGR recommendations, namely to:
 - increase the grade of the Chief of the National Guard Bureau from lieutenant general to general;
 - provide various qualifications for the officer to be appointed to the position of Chief of the National Guard Bureau; and
 - designate the Chief of the National Guard Bureau as an advisor to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on matters involving the National Guard not employed in a federal status.

- Sections 561 and 562 authorize \$50 million in supplemental educational aid to local school districts affected by the assignment or location of military families, including
 - \$35 million for supplemental impact aid,
 - \$5 million for educational services to severely disabled children, and
 - an additional \$10 million for districts experiencing rapid increases in the number of students due to rebasing, activation of new military units, or base realignment and closure.
- Section 572 amends 10 U.S.C. § 1044(a) to clarify that service secretaries have the authority to provide legal assistance to Department of Defense civilian employees for their personal civil legal affairs in locations where legal assistance from non-military legal assistance providers is not reasonably available.
- Section 591 amends 10 U.S.C. § 701 to increase for all service members the number of days of accumulated leave they may carry over from one fiscal year to the next from 60 to 90 days. It also authorizes enlisted service members who have accumulated more than 120 days of leave to sell back, on a one-time basis, up to 30 days of such leave in excess of 120 days, under special leave accrual provisions affecting deployed service members.

Title VI – Compensation and Other Personnel Benefits

- This title authorizes an across-the-board military pay raise of 3.5 percent (sec. 601) and various other bonuses and special pay authorities aimed at encouraging enlistment, reenlistment, and continued service by active-duty and reserve military personnel.
- Section 651 amends 10 U.S.C. § 1477 to allow service members to designate in writing any individuals to be the beneficiary for the \$100,000 death gratuity benefit.
- The committee directed the Department to complete a report on the implementation of the provisions in the FY07 Defense Authorization bill designed to provide protections for service members against predatory lending.
- Section 653 authorizes payment of combat-related special compensation to service members who are medically retired due to a combat-related disability. This payment is equal to the amount of retired pay forfeited because of the prohibition on concurrent receipt of military retired pay and Veterans disability compensation.
- Section 654 advances the day on which certain members of the reserve component may draw retirement pay. For such a person below the age of 60, that day is advanced by 3 months for every 90 days of aggregate service on active duty under certain mobilization authorities.

Title VII – Health Care

- Section 701 amends 10 U.S.C. § 1074g to authorize the Department of Defense to use federal pricing limits for pharmaceuticals dispensed through the Tricare retail program.
- This title requires surveys of civilian health and mental health care providers in Tricare and expands the surveys to measure the adequacy of providers of mental health care access, as well as adequacy of health care access for the Reserve and Guard.

Title VIII – Acquisition Policy and Management

- Section 801 restricts the Department’s flexibility to use multiyear contracts. 10 U.S.C. § 2306b provides the criteria under which multiyear contracts may be employed, one of which is that the use of a multiyear contract will result in “substantial savings” compared to the anticipated costs of carrying out the program through annual contracts. Section 801 directs the Department to promulgate regulations implementing this statutory provision to provide:
 - savings exceeding 10 percent shall be considered to be substantial;
 - savings between 5 and 10 percent shall not be considered to be substantial unless the Secretary determines in writing that an exceptionally strong case has been made with regard to the other statutory criteria of 10 U.S.C. § 2306b; and
 - savings less than 5 percent shall not be considered to be substantial.
 - In the past, 70 Senators have specifically authorized the use of multiyear contracts where savings were expected to be 2.2 percent.²
- Section 821 provides that no contract in excess of \$100 million may be awarded to a single contractor unless the head of an agency makes certain determinations.
- Section 871 directs the Department to promulgate regulations on the selection, training, equipping, and conduct of contractor personnel performing private security functions in an area of combat operations.
 - This is predominantly directed at regulating the conduct of all armed contractors in the battlespace.

Title IX – Department Policy and Management

- Section 902 designates the Deputy Secretary of Defense as the Chief Management Officer (“CMO”) of the Department of Defense under 10 U.S.C. § 132, and establishes a new position of Undersecretary of Defense for Management, who is to serve as the Deputy CMO.

² Roll Call Vote No. 184, 109th Cong., 2nd Sess., June 22, 2006 (approving S. Amdt. 4261 to S. 2766, FY07 Defense Authorization bill, by a vote of 70-28, which authorized multiyear contracts to procure the F-22A aircraft, where the use of multiyear contracts was expected to result in a savings of 2.2 percent); CRS, F-22A Raptor, p. 6, CRS Report RL31673 (finding the savings to be 2.2 percent).

- Section 905 directs each service acquisition executive to have a three-star principal military deputy.
- Section 921 directs the Secretary of Defense and the Director of National Intelligence to conduct a joint, comprehensive review of U.S. space posture.
- Section 936 directs the Comptroller General to submit a report assessing the recent reorganization of the Policy organization at the Department.

Title X – General Provisions

- Section 1023 amends fundamental aspects of the Combatant Status Review Tribunals (“CSRT”) to transform them into essentially mini-trials for alien unlawful enemy combatants to challenge their designation as an enemy combatant.
 - This section applies to any detainee who has been held by the Department for more than two years, which could have the effect of applying to close to 1,000 detainees in Afghanistan and tens of thousands of detainees in Iraq.
- Section 1023 amends the definition of unlawful enemy combatant at 10 U.S.C. § 948a(1) to mean a person who is not a lawful enemy combatant who
 - A. has engaged in hostilities against the United States;
 - B. has purposefully and materially supported hostilities against the United States (other than hostilities engaged in by lawful enemy combatants); or
 - C. has been a knowing and active participant in an organization that engaged in hostilities against the United States.
- This significantly changes the current definition with ramifications for two statutory schemes. First, this section directly amends the definition in the Military Commissions Act for war crimes trials, namely the jurisdiction of such tribunals. Second, this definition is incorporated by reference into the Detainee Treatment Act, creating, for the first time, a statutory standard for use in the CSRT process for determinations of combatant status.
 - Unlike the current definition in the Military Commissions Act, this new definition of “unlawful enemy combatant” does not cover persons engaging in hostilities or directly supporting hostilities against a co-belligerent.
 - A co-belligerent is an armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy, e.g., Northern Alliance forces who supported the fight against Taliban forces.
 - The bill’s definition is actuated by hostilities against the United States, not coalition allies or cooperating forces.
 - The import of this definitional change is especially acute with respect to persons who have been active and knowing participants in organizations that have provided material support to al Qaeda or the Taliban where such material support organizations have not themselves engaged in hostilities against the United States, but have done so against allies or coalition partners.

- It is also not clear if the definition would capture persons who are knowing and active participants in organizations planning attacks against the United States but who are captured prior to the plans being carried out, as the acts of the organization must amount to “engaging in hostilities against the United States.”
- Section 1023 then provides enemy combatants subpoena authority in their CSRT, giving them the power “to compel witnesses to appear and testify and to compel the production of other evidence.”
- With respect to classified information, section 1023 provides the detainee’s counsel with direct access to classified evidence, and the detainee “a summary of the classified evidence admitted against the detainee that is sufficiently specific to provide the detainee a fair opportunity to respond, with the assistance of counsel, to such evidence.”
 - This also applies in military commissions.
- Section 1023 makes changes to compromises reached in the Military Commissions Act last year with respect to the use of classified and hearsay evidence, along with evidence allegedly obtained under coercion.
- With respect to statements alleged to be obtained through coercion, section 1023 requires that a military judge may only admit it as evidence in either a CSRT or a military commission if the judge finds that:
 - the totality of the circumstances renders the statement reliable and possessing sufficient probative value;
 - the interests of justice would best be served by admission of the statement into evidence; and
 - one of the following circumstances is met:
 - the alleged coercion was incident to the lawful conduct of military operations at the point of apprehension,
 - the statement was voluntary, or
 - the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment.
- Section 1023 makes it more difficult to use hearsay evidence at a military commission, by requiring that the military judge find the hearsay evidence to be offered “more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.”
- Section 1001 provides a general transfer authority to the Department of \$5 billion, and that any transfer of funds between military personnel accounts (Title IV) would not count toward this limitation.
- Section 1003 modifies the general transfer authority provided for fiscal year 2007 to provide that transfers involving the Iraq Security Forces Fund or Joint Improvised Explosive Device Defeat Fund accounts shall not be counted toward the transfer authority limitation provided.

- Section 1006 repeals the requirement that the Department submit a biennial budget as part of the President's budget request for even-numbered fiscal years.
- Section 1011 authorizes the Department to provide support to Mexico and the Dominican Republic for their counter-drug activities, namely training and equipping.
- Section 1022 repeals Section 1076 of the FY07 Defense Authorization Act, which clarified the President's authority to employ the armed forces in response to a terrorist attack, natural disaster, or other event where public order has catastrophically broken down.
 - In report language, the committee directs the Commission on the National Guard and Reserves to examine the clarity of the implicated provisions and study whether the repealed provision inadvertently expanded the President's authority in any way. In the meantime, previous statutory language on this point is restored.
- After repealing the Insurrection Act authority clarified in Section 1076 of the FY07 Defense Authorization Act, to employ the Armed Forces in response to a catastrophic event, Section 1065 of the bill then directs the Secretary to establish an advisory panel to assess the capabilities of the Department to provide support to civil authorities in the event of a chemical, biological, radiological, nuclear, or high-yield explosive (CBRNE) incident.
- Section 1030 prohibits the Department from selling any parts for the F-14 fighter aircraft, with an exception for the sale of parts to a museum or similar organization located in the United States involved in the preservation of F-14 fighter aircraft for historical purposes.
- Section 1042 directs the Secretary of Defense, the Secretary of State, and the Director of National Intelligence, in coordination, to complete a report on the threats posed to the United States from ungoverned areas.
- Section 1061 directs the Secretaries of Defense, Energy, and State to conduct a review of the U.S. nuclear posture for the next 5 to 10 years, and submit a report on this review in December 2009.
- Section 1063(a) attempts to structure the time and manner in which the intelligence community responds to requests from Congress. As an initial matter, it puts into law that the intelligence community must respond within 15 days to a document or information request. The section then requires that the intelligence community deliver the documents or information requested "unless the President certifies that such document or information is not being provided because the President is asserting a privilege pursuant to the Constitution."
- Section 1063(c) then provides that no member of the Executive Branch may require an element of the intelligence community to
 - receive permission to testify before the Armed Services Committees, or

- have such testimony approved if such testimony includes a “statement indicating that the views expressed therein . . . do not necessarily represent the views of the Administration.”³
- Section 1064 repeals, upon the request of the Department, 10 U.S.C. § 986, which established mandatory standards under which the Department could not grant a security clearance to individuals, such as being an unlawful user of a controlled substance.
 - The repealed provision provided the Department with a waiver authority.

Title XI – DOD Civilian Personnel Policy

- Section 1104 alters the current authority of the Department to create a new National Security Personnel System (“NSPS”) for all 700,000 civilian employees.
 - It revises current authority by, among other things,
 1. excluding wage-grade employees of the Department of Defense from NSPS (approximately 170,000); and
 2. accelerating by 2 years the expiration of the Department’s authority to modify statutory labor-relations requirements and create a new labor-relations system.
 - This reverses the Department’s temporary authority under the NSPS to regulate the collective bargaining rights of the Department’s civilian workforce through November 2009, which the D.C. Circuit recently held Congress has specifically authorized the Department to do.⁴
 - As background, to date, the Department has converted approximately 113,000 employees to pay-for-performance under NSPS, and an additional 90,000 are scheduled to be so converted in fiscal year 2008. This provision likely does not upset that plan.
- Section 1104 clarifies that the Department will not bargain over civilian pay.

Title XII – Matters Relating to Other Nations

- Section 1202 extends for one year the authority granted to the Department by Section 1207 of the FY06 Defense Authorization Act to provide the Secretary of State with services, defense articles, or funding to facilitate the State Department’s efforts to provide reconstruction, security, or stabilization assistance to a foreign country.

³ This provision of the bill raises substantial Constitutional concerns. Primarily, the Executive argues that this would be a direct intrusion on the ability of the President to control the Executive Branch. Statement of Administration Policy on S. 4, Improving America’s Security Act of 2007, 110th Cong., 1st Sess. (Feb. 28, 2007) (arguing that these “anti-coordination provisions would place unconstitutional restrictions on the President’s authority to oversee the Executive Branch”). See United States Department of Justice Office of Legal Counsel, *Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress*, 6 Op. O.L.C. 632, 633 (1982) (asserting that a statutory “requirement that subordinate officials within the Executive Branch submit reports directly to Congress, without any prior review by their superiors, would greatly impair the right of the President to exercise his constitutionally based right to control the Executive Branch”).

⁴ American Federation of Government Employees v. Gates, Case No. 06-5113 (D.C. Cir., May 18, 2007).

- This provision increases the aggregate value of support that may be provided by the Department of Defense to the Department of State in FY08 to \$200 million.
 - “Section 1207” authority may, among other things, be used to support State Department programs and authorities to train and equip foreign police, gendarmerie, constabulary, and internal defense forces to enhance security and stability.
 - This authority differs from, but compliments, the authority granted by Section 1206 of the FY06 Defense Authorization Act Section 1206, which authorizes the Secretary of Defense (with the concurrence of the Secretary of State) to build the capacity of a foreign nation’s military forces in order for that nation to conduct counter-terrorist operations and to participate in or support military and stability operations in which the United States is a participant.
 - So-called “Section 1206” authority remains authorized at the level of \$300 million for FY08.
- Section 1217 of this bill would prohibit Section 1207 funds for the State Department until the President appoints a senior coordinator on U.S. policy toward North Korea, as required by Section 1211 of the 2007 Defense Authorization act.
- Section 1203 of the bill authorizes the Department to use up to \$977.4 million in O&M funding in fiscal year 2008 for the Commanders’ Emergency Response Program (“CERP”). Under CERP, U.S. commanders are authorized and provided funds to respond to (local) urgent humanitarian relief and reconstruction requirements within their areas of responsibility in Iraq and Afghanistan.
- Section 1215 prohibits DOD assistance to Thailand in response to the September 19, 2006 military coup there, until such time as the President certifies that a democratically-elected government has taken office.
 - This provision does not apply to humanitarian or other emergency assistance, and also provides the President a national security waiver.
- Section 1216 restricts funding for the Office of the Under Secretary of Defense for Policy, providing that not more than 75 percent of the funds available for that office may be obligated until the President submits the overdue report on U.S. policy for Iran required by the 2007 Defense Authorization act.
- Section 1231 directs the President to submit a report every 180 days on U.S. policy and military operations in Afghanistan.
- Section 1232 directs the President to submit a report on the strategy to engage Pakistan on safe havens for extremists in Pakistan and the cross-border movements of extremists.
 - This provision restricts assistance to Pakistan, providing that the United States may not reimburse Pakistan for the provision of logistical, military, or other support for military operations unless the President certifies that Pakistan is making substantial and sustained efforts to eliminate safe havens for violent extremists in areas under its sovereign control.
 - There is a national security waiver to this provision.

Title XIII – Cooperative Threat Reduction With States of the Former Soviet Union

- Section 1302 authorizes \$448 million for Cooperative Threat Reduction (“CTR”) programs, which is \$100 million more than the President’s budget request.
- Section 1303 authorizes the Secretary of Defense to execute CTR programs in states outside the former Soviet Union, and authorizes in Section 1302 \$10 million for such purposes.
- Section 1305 repeals various annual certification requirements under the CTR program, for example that a recipient state is complying with all relevant arms control agreements, or observing internationally recognized human rights.

Title XIV – Other Authorizations

- Section 1403 authorizes \$22.5 billion for the Defense Health Program, of which:
 - \$22 billion is for O&M,
 - \$136 million is for RDT&E, and
 - \$362 million is for procurement.
- Section 1404 authorizes \$1.5 billion for chemical agents and munitions destruction, of which:
 - \$1.2 billion is for O&M,
 - \$275 million is for RDT&E, and
 - \$30 million is for procurement.
- Section 1405 authorizes \$959 million for drug interdiction and counter-drug activities.
- Section 1406 authorizes \$226 million for the Inspector General, of which:
 - \$224 million is for O&M, and
 - \$1 million is for procurement.

Title XV –Authorization for Supplemental Appropriation for Iraq, Afghanistan, and the Global War on Terrorism

- Section 1521 provides that the purpose of this title is to authorize additional appropriations for the Department of Defense for fiscal year 2008 for the incremental costs of Operation Iraqi Freedom and Operation Enduring Freedom.
- This title authorizes \$127.5 billion for appropriations to support operations in Iraq, Afghanistan, and the war against terrorists, none of which are treated as emergency spending, and which is \$14.3 billion less than the President’s request. The Committee claimed that the bulk of this decrease comes from transferring funds out of the President’s emergency supplemental request to the base budget elements throughout the bill. Of this amount:
 - \$28.3 billion is for procurement, which is \$7.7 billion less than the budget request,

- \$2 billion for RDT&E, which is \$907 million less than the President's request,
- \$72 billion for O&M, which is \$852 million less than the President's request, and
- \$12.9 billion for military personnel, which is \$4.1 billion less than the request.

Sections 1501-04 authorize the following amounts for procurement:

- Aircraft, Army: \$890.8 million,
- Missile, Army: \$492.7 million,
- Weapons and tracked combat vehicles, Army: \$1.2 billion,
- Ammunition, Army: \$303 million,
- Other, Army: \$10.3 billion,
- Aircraft, Navy: \$2.3 billion,
- Weapons, Navy: \$251.3 million,
- Other, Navy: \$814.3 million,
- Marine Corps: \$4.2 billion
- Aircraft, Air Force: \$2.1 billion,
- Ammunition, Air Force: \$74 million,
- Missile, Air Force: \$1.8 million,
- Other, Air Force: \$4.2 billion, and
- Defense-wide: \$593.8 million.

- Section 1505 authorizes the following amounts for RDT&E:
 - \$121.7 million for the Army,
 - \$370.8 million for the Navy,
 - \$922.8 million for the Air Force, and
 - \$535.1 million for Defense-wide.

- Section 1506 authorizes the following amounts for O&M:
 - \$45.5 billion for the Army,
 - \$5.2 billion for the Navy,
 - \$10.5 billion for the Air Force,
 - \$4 billion for the Marine Corps,
 - \$6 billion for Defense-wide,
 - \$158.4 million for the Army Reserve,
 - \$69.6 million for the Navy Reserve,
 - \$68 million for the Marine Corps Reserve,
 - \$466.2 million for the Army National Guard, and
 - \$31.2 million for the Air National Guard.

- Section 1507 authorizes the following amounts for military personnel:
 - \$9.1 billion for the Army,
 - \$752.1 million for the Navy,
 - \$1.4 billion for the Air Force,
 - \$817.5 million for the Marine Corps,
 - \$235 million for the Army Reserve,
 - \$70 million for the Navy Reserve,

- \$3 million for the Air Force Reserve,
 - \$15.4 million for the Marine Corps Reserve, and
 - \$476.6 million for the Army National Guard.
- Sections 1508-13 respectively authorize:
 - \$1 billion in O&M funds for the Defense Health Program,
 - \$257.6 million in Defense-wide funds for counter-drug activities,
 - \$4.5 billion for the Joint Improvised Explosive Device Defeat Fund,
 - despite the committee's own acknowledgement that IED devices "are almost certainly here to stay as a threat to U.S. and allied military forces," the committee shifted the base budget request of \$500 million to be added to the war-related request of \$4 billion, and
 - in report language, the committee directed that the Joint Improvised Explosive Device Defeat Office direct not less than \$50 million to blast-related medical research, including research and development of diagnostics, training, and treatment for traumatic brain injury.
 - \$2 billion for the Iraq Security Forces Fund,
 - \$2.7 billion for the Afghanistan Security Forces Fund, and
 - \$107.5 million for the Iraq Freedom Fund.
- Section 1523 provides transfer authority of \$3.5 billion for this Title (Title XV), which is in addition to the \$5 billion authority provided in Section 1001. Moreover, additional transfer authority is provided to the Department specific to its use of the Joint Improvised Explosive Device Defeat Fund, Iraq Security Forces Fund, and the Afghanistan Security Forces Fund.
- The bill also provides that the Department may deliver assistance under the Iraq Security Forces Fund and the Afghanistan Security Forces Fund only upon the concurrence of the Secretary of State.
- Section 1531 provides that no funds may be used to establish permanent military bases in Iraq, or exercise U.S. control over Iraqi oil resources.
 - This reiterates current U.S. policy.
- Section 1532 provides that, of the O&M funds provided in Section 1506, the Secretary of Defense (with the concurrence of the Secretary of State and in consultation with the Director of the Office of Management and Budget) may use up to \$1.2 billion to reimburse any key cooperating nation for logistical and military support provided by that nation in connection with U.S. military operations in Operation Iraqi Freedom or Operation Enduring Freedom.
- Section 1533 provides that, of the O&M funds available to the Department in fiscal year 2008, the Department may use up to \$400 million to provide supplies, services, transportation, and other logistical support to coalition forces supporting U.S. military and stabilization operations in Iraq and Afghanistan.
 - This authority is only available if the Secretary determines that the coalition forces to be provided the logistical support

- are essential to the success of a United States military or stabilization operation; and
 - would not be able to participate in such operation without the provision of the logistical support.
- For the procurement of Mine Resistant Ambush Protected vehicles (“MRAP”), the committee recommended an increase of \$4.1 billion in funds in Title XV, of which
 - \$1.6 billion is for Other Procurement, Army,
 - \$2 billion is for Marine Corps Procurement,
 - \$430 million is for Other Procurement, Air Force,
 - \$21 million is for Other Procurement, Navy, and
 - \$124 million is for Defense-wide Procurement, Defense-wide.
- The committee recommended completely eliminating the request of \$230 million in war-related Air Force Aircraft Procurement funds for the procurement of the Joint Strike Fighter.
- The committee recommended a decrease of \$468 million from the request of \$1.4 billion in war-related Air Force Aircraft Procurement funds for the procurement of the C-130J tactical airlift aircraft.
 - The committee recommended fully funding the budget request of \$495.4 million in war-related Navy Aircraft Procurement funds to procure KC-130J aerial refueling aircraft.
- The committee denied the budget request of \$492.5 million in war-related Air Force Aircraft Procurement funds for the procurement of CV-22 Osprey aircraft.
 - The committee recommended fully funding the budget request of \$140.5 million in war-related Navy Aircraft Procurement funds to procure MV-22 aircraft.

Division B – Military Construction and Family Housing Activities

The committee approved \$22.6 billion for military construction and housing programs, which is \$460.9 million more than the President’s budget request (having requested \$21.2 billion in the base budget and \$907.9 million in emergency spending). This Division of the bill also authorizes the base closure accounts that fund military construction, environmental cleanup, and other activities required to implement the decisions in base closure rounds.

- Of this amount, \$8.4 billion is authorized to carry out base closure activities, including those to implement the 2005 Defense Base Realignment and Closure (“BRAC”) round, which is an amount equal to the budget request.
- The bill authorizes appropriations of \$4.8 billion for Army military construction in Titles XXI and XXIX, which is \$30.4 million more than the President’s budget request; and \$1.2 billion for Army family housing, which is at the President’s budget request.
 - Title XXIX authorizes \$752 million in war-related military construction projects for the Army, which is \$13.8 million more than the President’s request.

- The bill authorizes appropriations of \$2.4 billion for Navy military construction, which is \$103 million more than the President’s budget request; and \$671.5 million for Navy family housing, which is \$10 million less than the President’s budget request.
 - These authorized amounts include the Administration’s emergency request, which was \$157.3 million for Navy military construction, and \$11.8 million for Navy family housing.
- The bill authorizes appropriations of \$1 billion for Air Force military construction, which is \$134.2 million more than the President’s budget request; and \$1.1 billion for Air Force family housing, which is at the President’s budget request.
- The bill authorizes appropriations of \$1.9 billion for defense agency military construction, which is \$95.8 million more than the President’s budget request; and \$49.3 million for defense agency family housing, which is at the President’s budget request.
- Section 2601 authorizes appropriations of \$895.3 for military construction for Guard and Reserve components, which is \$200.1 million more than the President’s budget request.
- Section 2811 authorizes a general transfer authority within funds allocated pursuant to Division B of \$200 million.

Division C – Department of Energy National Security Authorizations and Other Authorizations

Title XXXI – Department of Energy National Security Programs

- This title authorizes appropriations for atomic energy defense activities of the Department of Energy for FY08 in the amount of \$15.9 billion, which is \$6.9 million less than the President’s budget request. Of this amount:
 - Section 3101 authorizes \$9.5 billion for the National Nuclear Security Administration (“NNSA”), of which:
 - \$6.5 billion is for weapons activities, which is \$39.1 million less than the budget request;
 - \$1.8 billion is for defense nuclear nonproliferation activities, which is \$87 million more than the budget request;
 - This amount authorized includes the Administration’s budget request of \$50 million in emergency spending for these activities.
 - \$808.2 million is for naval reactors, which is the amount of the budget request; and
 - \$399.7 million is for the Office of the Administrator, which is \$5 million more than the budget request.
 - Section 3102 authorizes \$5.4 billion for defense environmental cleanup activities, which is \$47 million more than the budget request.

- Section 3103 authorizes \$663.1 million for other defense activities, which is \$100.9 less than the budget request.
 - Section 3104 authorizes \$242 million for defense nuclear waste disposal, which is \$50 million less than the budget request.
- In report language, the committee recommended \$171.7 million for nuclear weapons incident response, which is \$10 million more than the budget request.
- The committee recommended \$50 million for the International Atomic Energy Agency nuclear fuel bank.
- Section 3111 restricts the use of funding with respect to the Reliable Replacement Warhead (“RRW”) program, providing that not more than \$195.1 million may be expended on the program, which amounts to a reduction of \$43 million from the budget request.
 - The section further restricts the program by prohibiting employing funds for steps beyond phase 2A activities (where nuclear weapons acquisition is comprised of eight steps—1, 2, 2A, and 3-7—which is the life cycle from concept development to dismantlement).
 - Phase 2A is for design definition and cost study, while Phase 3 is full-scale engineering development.
 - The current state of the law with respect to RRW is such that Congress must specifically authorize and appropriate funds for the activities and funding for each individual phase, and all subsequent phases thereafter.
- Section 3121 repeals the requirement of 50 U.S.C. § 2528a that the Secretary of Energy achieve and maintain a capability/readiness posture of the Department to resume underground tests of nuclear weapons within 18 months of being directed to do so by the President.
 - The committee then stated in report language that it would leave to the Secretaries of Defense and Energy to establish the appropriate level of test readiness. Current test readiness is 24-months, as reported in a DOE assessment provided to Congress in 2006.
- Section 3122 then expresses the sense of Congress on U.S. nuclear nonproliferation policy and the RRW. In report language, the Committee expressed its sense that the United States should initiate the actions outlined in the section “before any decision is made to manufacture or deploy” the RRW, including:
 - discussing with other nuclear weapons states how their nuclear weapons programs and plans, “including plans for any new weapons or warheads,” relate to their obligations under the Nuclear Nonproliferation Treaty (“NPT”), and
 - ratifying the Comprehensive Test Ban Treaty (“CTBT”).
 - The Senate rejected the CTBT by a vote of 48-51-1 on October 13, 1999.⁵

⁵ Roll Call Vote No. 325, 106th Cong., 1st Sess. (Oct. 13, 1999).

Administration Position

A Statement of Administration Policy was not available at the time of publication.

Cost

The Congressional Budget Office issued its cost estimate on June 21, 2007. CBO estimates that S. 1547 would authorize appropriations in the amount of \$629 billion for FY08, including \$128 billion for operations in Iraq and Afghanistan.

Possible Amendments

As of the publication of this notice, there is no unanimous consent agreement that limits the submission of amendments.

In a June 12, 2007 press conference, the Majority Leader promised that the Democrats would attempt to re-visit four amendments: 1) “timelines” (“Reid-Levin”), 2) “readiness” (“Webb”), 3) cut-off funds (“Feingold-Reid”), and 4) “authorization.”

In its deliberation of the bill on sequential referral, the Senate Intelligence Committee recommended amendments to Section 1023 concerning a detainee’s access to witnesses and evidence, namely a summary of classified evidence. It also recommended deletion of Sections 1063 (structuring interactions between the legislative and executive branches) and 1064 (repealing the mandatory standards under which the Department cannot grant a security clearance to individuals).

It is also possible that an amendment to provide alien enemy combatants the ability to file a habeas petition in U.S. federal court may be offered.

A number of other amendments are expected.